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**UTAH LABOR COMMISSION**

**LISA HOLMES,**

**Petitioner,**

**vs.**

**AUTOLIV and  
TRAVELERS INDEMNITY CO.,**

**Respondents.**

**ORDER AFFIRMING  
ALJ'S DECISION**

**Case No. 05-0704**

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Autoliv and its insurance carrier, Travelers Indemnity Co., (referred to jointly as “Autoliv”) ask the Utah Labor Commission to review Administrative Law Judge Marlowe’s award of benefits to Lisa Holmes under the Utah Workers’ Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63G-4-301 and § 34A-2-801(3).

**BACKGROUND AND ISSUE PRESENTED**

Ms. Holmes claims workers’ compensation benefits from Autoliv for a work accident that occurred on April 27, 2004, allegedly causing injury to her back. The parties stipulated to facts, waived the evidentiary hearing, and requested referral of the medical issues to a medical panel. Judge Marlowe appointed a panel and, after receiving its opinion, adopted the panel’s findings on medical causation and its assessment of a 13% whole person impairment, and awarded benefits accordingly.

In its motion for review, Autoliv argues that the work accident did not medically cause Ms. Holmes back condition and that Judge Marlowe erred in adopting the medical panel’s assessment of a 13% whole person impairment with no apportionment for her preexisting condition.

**FINDINGS OF FACT**

The Commission adopts Judge Marlowe’s findings of fact, taken from the parties’ stipulation. The facts relevant to the motion for review, with supplementation from the record, are as follows:

Ms. Holmes had complained of back problems prior to her work injury. An MRI from 1999 revealed degeneration at L4-5 and L5-S1. Notes from a doctor’s visit in 2000 show she reported suffering from back pain over the last 20 years. Ms. Holmes reported increased lower back pain in March 2004, after Autoliv began producing wider airbags, requiring her to reach forward farther

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than before to fold the airbags.

On April 27, 2004, Ms. Holmes was pushing a stack of totes weighing 135 pounds when the stack caught on a piece of cardboard. She reported feeling sudden pain in her lower back and sought medical treatment the following day. She later underwent an L4-5 laminectomy and lumbar discectomy on September 10, 2004, and was released from work through December 20, 2004. In the opinions of Ms. Holmes' treating doctors, Drs. Grogan, Anden, and Warner, her back injury was caused by the work accident of April 27, 2004.

At Autoliv's request, Dr. Knoebel examined Ms. Holmes and assessed a 10% whole person impairment for the back injury; however, he concluded that Ms. Holmes' back injury and subsequent treatment and impairment were not caused by her work activities. The parties stipulated that the pertinent issues for referral to the medical panel were: (1) whether there should be apportionment of Ms. Holmes' impairment rating under the Utah Occupational Disease Act if the panel found Ms. Holmes' back injury was caused by repetitive bending; and (2) "medical causation, reasonable and related medical care, impairment and possible apportionment."

Judge Marlowe appointed a medical panel and drafted several questions, including "[w]hat is the percentage of permanent physical impairment, if any, attributable to the applicant's industrial injury?" Neither party objected to the questions presented to the panel. The medical panel, consisting of a neurologist and an orthopedic surgeon and spine specialist, reviewed the stipulated facts and the medical record and examined Ms. Holmes. The panel concluded that the back injury was not caused by repetitive bending, further stating:

However we interpret her current low back condition as representing the aftermath of a severe L4-5 disk herniation which appeared suddenly due to the work injury dated April 27, 2004. In the absence of this new injury, it would have been appropriate to apportion both causation and impairment rating if her symptoms had simply been her usual low back pain exacerbated by the repetitive reaching and bending. However, there was a marked change in her clinical findings, ability to function, and lumbar MRI scan indicating a new disk herniation after the April 27, 2004[sic] event representing an acute injury leading to surgery.

The panel assessed a 13% whole person impairment, 10% resulting from spinal surgery and 3% from radiculopathy, which it found was caused entirely from the work accident. Judge Marlowe awarded temporary total disability, medical expenses, and permanent partial disability compensation for a 13% whole person impairment.

**DISCUSSION AND CONCLUSION OF LAW**

In its motion for review, Autoliv first argues that Judge Marlowe's finding that the April 27, 2004, work injury caused Ms. Holmes' back injury is not supported by the evidence. The Commission notes that the parties agreed to refer the question of medical causation to the medical

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panel in order to obtain its impartial and expert opinion. The panelists personally examined Ms. Holmes and reviewed Ms. Holmes relevant medical history and records, the parties' stipulation of facts, and the opinions of both parties' medical consultants and treating physicians. Based on all this information, it was the panel's opinion that the April 2004 work accident caused Ms. Holmes' back injury. Given the panel's expertise and independence, the Commission finds the panel's opinion, which is also supported by the opinions of Drs. Grogan, Anden, and Warner, persuasive. The Commission finds that the evidence shows Ms. Holmes' back injury and subsequent medical treatment was caused by the April 27, 2004, work injury.

Autoliv next argues that there was no dispute over the 10% impairment rating that Dr. Knoebel provided and therefore it was inappropriate for Judge Marlowe to adopt the medical panel's assessment of Ms. Holmes' lower back impairment, which the panel inappropriately considered. However, the Commission finds no error in the medical panel's consideration and assessment of a different impairment rating than Dr. Knoebel assessed. The parties' stipulation conceded that the issues to be resolved included "impairment and possible apportionment." Further, Judge Marlowe asked the panel what percentage of permanent physical impairment, if any, was attributable to the work injury and, despite opportunity to object to the formulation of the question, neither party objected. The panel provided an answer that was in the realm of their expertise and relevant to the issues before the Commission. As stated above, the panel's impartiality and expertise are persuasive and the Commission finds no error in Judge Marlowe's adoption of the panel's assessment of a 13% permanent impairment rating.

Finally, Autoliv contends that the panel failed to consider apportionment in its impairment rating and that there is evidence that may contradict the panel's finding of a 3% impairment for radiculopathy entirely caused by the work injury. However, the Commission finds that the panel provided a well-reasoned and persuasive opinion as to why apportionment was not necessary in this case. Further, the parties previously agreed and submitted to the panel all the relevant facts—which did not include any reference to the evidence that Autoliv now seeks to submit. In summary, the Commission finds that the record shows Ms. Holmes' work injury left her with a 13% whole person impairment and affirms Judge Marlowe's award for permanent partial disability compensation based on the panel's impairment rating.

**ORDER**

The Commission affirms Judge Marlowe's decision and award for benefits. It is so ordered.

Dated this 31<sup>st</sup> day of December, 2008.

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Sherrie Hayashi  
Utah Labor Commissioner

**IMPORTANT! NOTICE OF APPEAL RIGHTS FOLLOWS ON NEXT PAGE.**

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**NOTICE OF APPEAL RIGHTS**

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.